

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

Case No. 3:22-cr-00033-SLG-KFR

HARDY FATUILESILA MUASAU

Defendant.

FINAL REPORT AND RECOMMENDATION UPON A PLEA OF GUILTY

Upon Defendant's request to enter guilty pleas, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, to Counts 1 of the Indictment, charging a violation of 21 U.S.C. § 841(a)(1), (b)(1)(A), Distribution of a Controlled Substance, and 18 U.S.C. §§ 922(g)(1), Felon in Possession of a Firearm, respectively, [Doc. 2], the District Court referred this matter to the Magistrate Judge, with the written and verbal consents of Defendant, counsel for Defendant, and counsel for the United States. As part of the plea agreement in this matter, Defendant agreed to plead guilty in Count 1 to the lesser-included offense of 21 U.S.C. § 841(a)(1), (b)(1)(A), Distribution of a Controlled Substance, to wit, between 5 and 50 grams of actual methamphetamine.

Thereafter, the matter came before this Court for a hearing on Defendant's guilty pleas, in full compliance with Rule 11, Federal Rules of Criminal Procedure, in open court and on the record.

In consideration of that hearing and the colloquy made by Defendant under oath, on the record, in the presence of counsel, and the remarks of the Assistant United States Attorney,

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A. I make the following FINDINGS – that Defendant understands:

24 ¹ As it relates to Count 1, Defendant pled guilty to the lesser-included offense 21 U.S.C. §
25 841(a)(1), (b)(1)(B). Accordingly, the Court advised Defendant of the sentences applicable
26 to this offense, as opposed to the greater penalties applicable to the charge alleged in the
27 Indictment. See Docket 42 in *United States v. Wehnes*, 3:22-cr-00021-SLG-KFR for Court's
28 prior order in a similar case that "drug quantity [is an] element of the offense" and
therefore facts contained within a Factual Basis admitting to a certain drug quantity do not
expose Defendant to a higher mandatory minimum and maximum sentence beyond the
lesser-include offense identified in the plea agreement.

1 That Defendant knowingly, intelligently, and voluntarily waives all right
2 to appeal or collaterally attack (except on the grounds of ineffective
3 assistance of counsel and the voluntariness of his pleas); and
4 That in determining a sentence, the court's obligation to calculate the
5 applicable sentencing guideline range pursuant to the Sentencing
6 Guidelines promulgated by the United States Sentencing Commission
7 and to consider that range, as well as departures under the Sentencing
8 Guidelines, and variances under 18 U.S.C. §3553(a).

9 **B. I further FIND:**

10 1. Defendant is competent to enter an informed plea;
11 2. Defendant is aware of his rights and has had the advice of legal counsel;
12 3. That the pleas of guilty by Defendant have been knowingly and
13 voluntarily made and are not the result of force, threats, or coercion;
14 4. Any agreements or promises which induced the plea of guilty are set
15 forth in the written plea agreement or on the record; and
16 5. That there is a factual basis for Defendant's pleas.

17 **B. I RECOMMEND:**

18 That the District Court accept Defendant's plea of guilty to the following:
19 1. the lesser-included offense of Count 1 of the Indictment, specifically,
20 a violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), Distribution of a
21 Controlled Substance, to wit, between 5 grams and 50 grams of pure
22 methamphetamine, and
23 2. Count 2 of the Indictment, charging a violation 18 U.S.C. §§
24 922(g)(1) , Felon in Possession of a Firearm.
25 That the District Court accept Defendant's admission to the Criminal
26 Forfeiture Allegation.

1 **D. IT IS ORDERED:**

2 That a Presentence Report be prepared by the U.S. Probation Office.

3 1. Any objection(s) to the presentence report shall be filed no later than
4 fourteen (14) days after receiving the presentence report (Fed. R. Crim.
5 P. 32(f)(1)); and
6 2. Any sentencing memorandum shall be filed no later than seven (7)
7 business days prior to sentencing (D.Ak. L.Cr.R. 32.1(d)).

8 The Sentencing hearing will be before a United States District Judge. The court
9 excludes time from February 23, 2023, until the time of sentencing pursuant to 18
10 U.S.C. §3161(h)(1)(G) on the grounds that the District Judge will be considering the
11 proposed plea agreement.

12 DATED this 28th of February 2023, at Anchorage, Alaska.

13
14 S/ Kyle F. Reardon
15 KYLE F. REARDON
16 United States Magistrate Judge
17 District of Alaska

18 This Report and Recommendation is being issued as a Final Report and
19 Recommendation. Pursuant to Fed. R. Crim P. 59(b)(3), any objections will be
20 considered by the District Court Judge who will accept, reject, or modify the
21 recommendation following de novo review. Any objections must be filed within
22 seven (7) days from the date of service of this Report and Recommendation. The
23 shortened objection deadline is due to the request of the District Court Judge. Fed.
24 R. Crim P. 59(b)(2) and D. Ak. L.M.R. 6(a) authorizes the court to alter the standard
25 objection deadlines.

26 Reports and recommendations are not appealable orders. Any notice of appeal
27 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
28 Court's judgment.²

² See *Hilliard v. Kincheloe*, 796 F.2d 308 (9th Cir. 1986).